

**R277. Education, Administration.**

**R277- 602. Special Needs Scholarships – Funding and Procedures.**

**R277-602-1. Authority and Purpose.**

- (1) This rule is authorized by:
  - (a) Utah Constitution Article X, Section 3, which vests general control and supervision of the public school system under the Board;
  - (b) Section 53A-1-401, which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law; and
  - (c) Section 53A-1a-707, which authorizes the Board to make rules establishing:
    - (i) the eligibility of students to participate in the scholarship program; and
    - (ii) the application process for the scholarship program.
- (2) The purpose of this rule is to:
  - (a) outline responsibilities of a parent, an LEA, an eligible private school, and the Board in providing choice for a parent of a special needs student who chooses to have a student served in a private school; and
  - (b) provide accountability for the citizenry in the administration and distribution of the scholarship funds.

**R277-602-2. Definitions.**

- (1) "Appeal" means an opportunity to discuss or contest a final administrative decision consistent with and expressly limited to the procedures of this rule.
- (2) "Appeals Committee" means a committee comprised of:
  - (a) the special needs scholarship coordinator;
  - (b) the Board's Special Education Director;
  - (c) one individual appointed by the Superintendent; and
  - (d) two Board-designated special education advocates.
- (3) "Assessment" means a formal testing procedure carried out under prescribed and uniform conditions that measures a student's academic progress, consistent with Subsection 53A-1a-705(1)(f).
- (4) "Assessment team" means the individuals designated under Subsection 53A-1a-703(1).
- (5) "Days" means school days unless specifically designated otherwise in this rule.
- (6) "Eligible student" means a student who meets the qualifications described in Section 53A-1a-704.
- (7) "Enrollment" means that:
  - (a) the student has completed the school enrollment process;
  - (b) the school maintains required student enrollment information and documentation of age eligibility;
  - (c) the student is scheduled to receive services at the school;
  - (d) the student attends regularly; and
  - (e) the school has accepted the student consistent with Rule R277-419 and the student's IEP.
- (8) "Private school that has previously served a student with a disability" means a school that:
  - (a) has enrolled a student within the last three years under the special needs scholarship program;
  - (b) has enrolled a student within the last three years who has received special

education services under an Individual Services Plan (ISP) from an LEA where the school is geographically located; or

(c) can provide other evidence to the Board that is determinative of having enrolled a student with a disability within the last three years.

(9) "Warrant" means payment by check to a private school.

### **R277-602-3. Parent Responsibilities and Payment Provisions.**

(1) To receive a scholarship, a parent of a student shall submit an application by the deadline described in Subsection 53A-1a-704(4), on a form specified by the Superintendent to:

(a) the LEA that the student is or was enrolled in; or

(b) if the student was not enrolled in an LEA in the school year prior to the school year in which the scholarship is sought, the school district that is responsible for the education of the student under the Individuals with Disabilities Education Act, 20 U.S.C. Sec. 1414.

(2) Along with the application described in Subsection (1), a parent shall submit documentation that:

(a) the parent is a resident of the state;

(b) the student is at least three years of age before September 2 of the year of enrollment;

(c) the student is not more than 21 years of age and has not graduated from high school; and

(d) the student has official acceptance at an eligible private school, as described in Section 53A-1a-705.

(3) Any intentional falsification, misinformation, or incomplete information provided on the application may result in the cancellation of the scholarship to the student and non-payment to the private school.

(4) The parent shall participate in an assessment team meeting to make the determinations described in Section 53A-1a-704.

(5)(a) The Superintendent shall make a scholarship payment in accordance with Section 53A-1a-706.

(b) A parent shall, consistent with Subsection 53A-1a-706(8), endorse the warrant received by the private school from the Superintendent no more than 15 calendar days after the private school's receipt of the warrant.

(6)(a) A parent shall notify the Board in writing within five days if the student does not continue in enrollment in an eligible private school for any reason, including:

(i) parent or student choice;

(ii) suspension or expulsion of the student; or

(iii) the student has unexcused absences during all of the prior 10 consecutive school days.

(b) If a student does not continue in enrollment, the Superintendent may:

(i) modify the payment to the private school; or

(ii) request reimbursement from the private school if payment has already been made.

(7) A parent shall cooperate and respond within 10 days to an enrollment cross-checking request from the Superintendent.

(8) The parent shall notify the Superintendent in writing by May 1 annually to

indicate the student's continued enrollment.

#### **R277-602-4. LEA Responsibilities.**

(1) An LEA that receives a student's scholarship application consistent with Subsection 53A-1a-704(4) shall:

(a) forward the application to the Superintendent no more than 10 days following receipt of the application;

(b) verify enrollment of the student seeking a scholarship in a previous school year within a reasonable time following contact by the Superintendent;

(c) verify the existence of the student's IEP and level of service to the Superintendent within a reasonable time;

(d) provide personnel to participate on an assessment team to:

(i) make the determination described in Section 53A-1a-704; or

(ii) determine whether a student who previously received a special needs scholarship is entitled to receive the scholarship during the subsequent eligibility period.

(3) A special needs scholarship student may not participate in an extracurricular or co-curricular activity at an LEA, consistent with the parent's assumption of full responsibility for a student's services under Subsection 53A-1a-704(5).

(4) An LEA shall cooperate with the Superintendent in cross-checking special needs scholarship student enrollment information to ensure scholarship payments are not erroneously made.

(5)(a) An LEA shall provide written notice to a parent of a student who has an IEP of the availability of a scholarship to attend a private school in accordance with Subsection 53A-1a-704(10).

(b) The written notice shall consist of the following statement: A local education agency is required by Utah law, Subsection 53A-1a-704(10), to inform parents of students with IEPs enrolled in public schools, of the availability of a scholarship to attend a private school through the Carson Smith Scholarship Program.

#### **R277-602-5. State Board of Education Responsibilities.**

(1) No later than April 1, the Superintendent shall provide an application containing acknowledgments required under Subsection 53A-1a-704(5), for a parent seeking a special needs scholarship:

(a) online;

(b) at the Board office; and

(c) at LEA offices.

(2) The Superintendent shall provide a determination that a private school meets the eligibility requirements of Section 53A-1a-705 as soon as possible but no more than 30 calendar days after the private school submits an application and completes documentation of eligibility.

(3) The Superintendent may:

(a) provide reasonable timelines within the application for satisfaction of private school requirements;

(b) issue letters of warning;

(c) require the school to take corrective action within a time frame set by the Superintendent;

(d) suspend the school from the program consistent with Section 53A-1a-708;

(e) establish an appropriate penalty for a private school that fails to comply with requirements described in Title 53A, Chapter 1a, Part 7, Carson Smith Scholarships for Students with Special Needs, including:

- (i) providing an affidavit under Section 53A-1a-708;
- (ii) administering assessments or reporting an assessment to a parent or assessment team under Subsection 53a-1a-705(1)(f);
- (iii) employing teachers with credentials required under Subsection 53A-1a-705(g);
- (iv) providing to a parent relevant credentials of teachers under Subsection 53A-1a-705(i); or
- (v) requiring a completed criminal background and ongoing monitoring under Title 53A, Chapter 15, Part 15, Background Checks and take appropriate action consistent with information received; or
- (f) initiate a complaint and hold an administrative hearing, as appropriate, and consistent with this rule.

(4) The Superintendent shall make a list of eligible private schools updated annually and available no later than June 1 of each year.

(5) On or before July 1, the Superintendent shall annually publish information regarding the level of funding available for scholarships for the fiscal year.

(6) The Superintendent shall mail a scholarship payment directly to a private school in accordance with Subsection 53A-1a-706(8) as soon as reasonably possible.

#### **R277-602-6. Responsibilities of Private Schools that Receive Special Needs Scholarships.**

(1) To be eligible to enroll a scholarship student, a private school shall:

- (a) meet the criteria described in Section 53A-1a-705; and
- (b) submit an application and appropriate documentation by the deadline established in Section 53A-1a-705 to the Superintendent on a form designated by the Superintendent.

(2) A licensed independent certified public account that a private school contracts with to determine whether the private school has adequate working capital in accordance with Section 53A-1a-705 shall define adequate working capital as a working capital ratio of greater than one calculated by dividing current assets by current liabilities.

(3)(a) A private school that seeks to enroll a special needs scholarship student shall, in concert with the parent seeking a special needs scholarship for a student, initiate the assessment team meetings required under Section 53A-1a-704.

(b) A private school shall schedule a meeting at a time and location mutually acceptable to the private school, the applicant parent, and participating public school personnel.

(c)(i) A private school and public school shall confidentially maintain documentation regarding an assessment team meeting, including documentation of:

- (A) a meeting for a student denied a scholarship or service; and
- (B) a student admitted into a private school and the student's level of service.

(ii) Upon request by the Superintendent, a private school and public school shall provide the documentation described in Subsection (3)(c)(i) to the Superintendent for purposes of determining student scholarship eligibility or for verification of compliance.

(4) A private school that receives a scholarship payment shall provide complete student records in a timely manner to another private school or a public school that

requests student records if a parent transfers a student under Subsection 53A-1a-704(7).

(5) A private school shall notify the Board within five days if the student does not continue in enrollment in an eligible private school for any reason, including:

(a) parent or student choice;

(b) suspension or expulsion of the student; or

(c) the student has unexcused absences during all of the prior ten consecutive school days.

(6) A private school shall satisfy health and safety laws and codes required by Subsection 53A-1a-705(1)(d), including:

(a) the adoption of emergency preparedness response plans that include training for school personnel and parent notification for fire drills, natural disasters, and school safety emergencies; and

(b) compliance with Rule R392-200, Design, Construction, Operation, Sanitation, and Safety of Schools.

(7)(a) An approved eligible private school that changes ownership shall submit a new application for eligibility to receive a special needs scholarship payment from the Superintendent:

(i) that demonstrates that the school continues to meet the eligibility requirements of Section 53A-1a-705 and this rule; and

(ii) within 60 calendar days of the date that an agreement is signed between previous owner and new owner.

(b) If the Superintendent does not receive the application within the time described in Subsection (7)(a)(ii):

(i) the new owner of the school is presumed ineligible to receive continued special needs scholarship payments from the Superintendent;

(ii) at the discretion of the Board, the Superintendent may reclaim any payments made to a school within the previous 60 calendar days; and

(iii) the private school shall submit a new application for eligibility to enroll special needs scholarship students consistent with the requirements and timelines of this rule.

#### **R277-602-7. Special Needs Scholarship Appeals.**

(1)(a) A parent of an eligible student or a parent of a prospective eligible student may appeal only the following actions under this rule:

(i) an alleged violation by the Superintendent of Sections 53A-1a-701 through 710 or this rule; or

(ii) an alleged violation by the Superintendent of a required timeline.

(b) An appellant has no right to additional elements of due process beyond the specific provisions of this rule.

(2) The Appeals Committee may not grant an appeal contrary to Sections 53A-1a-701 through 53A-1a-710.

(3) A parent shall submit an appeal:

(a) in writing to the Board's Special Needs Scholarship Coordinator at: Utah State Board of Education, 250 East 500 South, P.O. Box 144200, Salt Lake City, UT 84114-4200; and

(b) within 15 calendar days of written notification of the final administrative action described in Subsection (1)(a).

(4)(a) The appeal opportunity does not include an investigation required under or

similar to an IDEA state complaint investigation.

(b) Nothing in the appeals process established under this rule shall be construed to limit, replace, or adversely affect parental appeal rights available under IDEA.

(5) The Appeals Committee shall:

(a) consider an appeal within 15 calendar days of receipt of the written appeal;

(b) transmit the decision to a parent no more than ten calendar days following consideration by the Appeals Committee; and

(c) finalize an appeal as expeditiously as possible in the joint interest of schools and students involved.

(6) The Appeals Committee's decision is a final administrative action.

**KEY: special needs students, scholarships**

**Date of Enactment or Last Substantive Amendment: 2017**

**Notice of Continuation: August 13, 2015**

**Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-1a-707; 53A-1-401**